

THE  
SCIENCE OF THE TALMUD

AN ESSAY WRITTEN FOR THE

Young Men's Hebrew Association  
of Philadelphia

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BY

CHARLES M. BOERMAN

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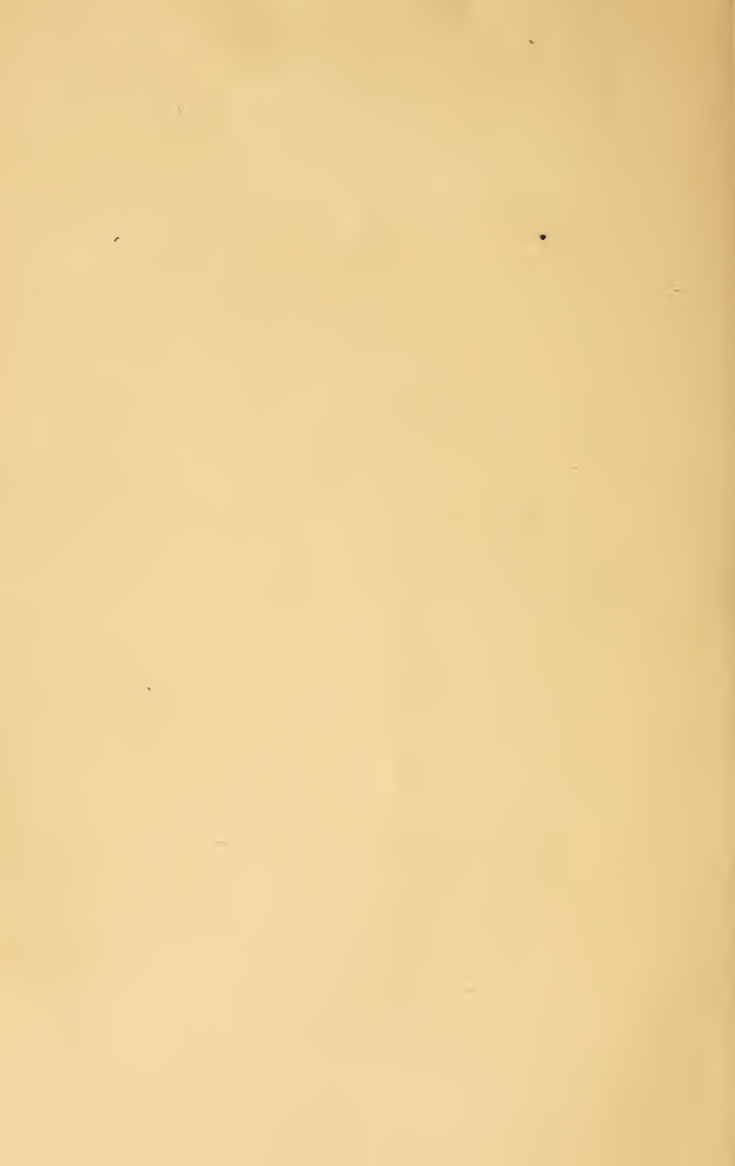
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The Young Men's Hebrew Association, of Philadelphia, offered a prize of Fifty Dollars for the best essay on

“THE SCIENCE OF THE TALMUD.”

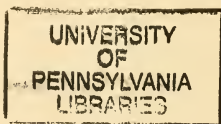
The competition closed on April 1, 1894. The judges of the essays were:

Rev. Dr. MARCUS JASTROW, Philadelphia.

Rev. Dr. GUSTAVE GOTTHEIL, New York.

Rev. Dr. BENJAMIN FELSENTHAL, Chicago.

The prize was awarded to Mr. CHARLES M. BOERMAN, the author of this essay, and the judges recommended his paper for publication.



TO YISRAELI INT  
TO YISRAELI INT  
ANALYSE

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## CHAPTER I.

### STATE OF THE NATION AT THE BEGINNING OF AND DURING THE TALMUDIC EPOCH.

The people of Israel completed the most important cycle of their national existence long before the cornerstone was laid of that stupendous edifice, known as the Talmud. Seventeen centuries had passed since the Hebrew tribes, wandering first in Chaldea, then sojourning in Egypt, had conquered the land of Canaan and had there become a nation. For nearly four centuries the people lived under no fixed form of government, submitting their disputes to the Shophet or judge, generally a man respected for his wisdom and integrity, and, when occasion required, choosing from their midst a military leader renowned for his strength and bravery. But being surrounded by hostile and warlike tribes and petty nations, by whom they were constantly threatened with invasion and spoliation, the people of Israel, in order to better consolidate their forces, resolved to choose a king, to be charged with the repulse of these warlike attacks of their neighbors and with the defence of their territory. Three kings only governed the whole people of Israel, and, after an existence of a little more than a century, the kingdom was rent by a war of secession and the northern tribes separated from the southern. The northern kingdom, after three centuries and a half, succumbed to the power of Assyria, the southern kingdom lasting about a century and a half longer, but being finally overthrown by Nebuchadnezzar, king of Babylon. As the policy of the Assyrian and Babylonian kings was to not only conquer but destroy and devastate the countries with which they waged war, and to carry into captivity the greater part of the population, it was difficult for a conquered people ever to regain control of their country.

But after the empire of Babylon fell under the hands of the Persians, Cyrus, King of Persia, inaugurated a milder and more humane policy towards the nations comprising his vast empire. He granted leave to the Jews who remained in Jerusalem, and to those exiles who wished to return to their fatherland, to rebuild the temple, which had been destroyed by Nebuchadnezzar. The temple was considered by the Jews the centre of their national life; it was the great object of their affections and holy traditions, reminding them of the days gone by, when they were a nation among nations. The faithful Israelites gathered around their

Beth-Hamikdash (Temple); they again started their peaceful pursuits, so cruelly interrupted by the conquest and captivity, and Palestine became for the second time a flourishing country. Although agriculture remained the chief occupation of the people, industry and commerce very soon advanced with large strides, and the economic condition of the people improved rapidly, owing to their closer intercourse with the other component parts of the Persian Empire.

Under the Seleucidian kings of Syria, into whose hands Palestine fell after the death of Alexander of Macedon, the Jews, being cruelly oppressed and hindered in their religious rites and services, rose in revolt under the Maccabees and regained their independence, but, alas! only for a short time. Jerusalem was shortly taken by Roman arms under Pompey, and Judea was soon afterward reduced to a Roman province. Several attempts were made by the brave Jews to shake off the yoke of the Romans, but it was impossible for them to withstand the most powerful empire that ever existed. So the temple was destroyed by Titus, and Jerusalem laid waste, and finally the population was decimated, exiled and taken into captivity under the Emperor Hadrian.

During all these vicissitudes and changes of fortune which befell Israel from the time of the birth of the nation, the moral and religious life of the people grew slowly but steadily in strength, depth and breadth. The law which, according to tradition, was proclaimed to the people of Israel from Mount Sinai, remained for a long time a dead letter, the people preferring the image of the golden calf, and the brazen serpent, and the service of Baal, Moloch and Ashtoreth, to the abstract idea of an unseen, unknowable, infinite and everlasting Supreme Being. All through the period of the Judges and during the greater portion of the reign of the Kings, the people continued to serve heathen gods and to sacrifice to them. But gradually dawn broke upon them and the light of a truer religion opened their eyes, and with the more enlightened belief came also purer ideas of morality and justice. The great prophets appeared in the arena. Isaiah, with his grand moral perceptions, his clear religious ideas, his divine gift of eloquence, spoke words which could not fail to pierce the hearts of the feeling, so that all in Israel who had eyes saw the light, and all who had ears heard the words of truth. Jeremiah in Jerusalem and Ezekiel in Babylon, and especially the great unknown prophet, whose divine speeches are attached to those of Isaiah, continued the work of teaching the people true religion and pure morals.

And so it happened that the Jews, after returning from exile and captivity, professed more fervently and with greater ardor the religion bequeathed by their fathers, than did the fathers themselves. "And the glory of the second temple came to be greater than the glory of the first." Soon after the return, the books were searched, rewritten and corrected, and the traditions were revived and sanctioned by the Sopherim or Scribes. Afterwards there was held a great Council of the learned, a parliament of the notables in Israel (the Keneseth Hagdola) to revise the laws and to deliberate concerning the internal state of the nation and the necessary improvements and institutions adapted to the wants of the people. Schools of learning were now started, where the law was studied and expounded, and the sacred and legal literature and science were assiduously cultivated.

But the thirst for knowledge once aroused could not be easily quenched. Teachers and seekers after truth arose with diverse theories of the universe, with different systems concerning the salvation of the soul, and with a great variety of interpretations of the ancient revealed law. At the time of the destruction of the temple by Titus (about 70 C. E.) there was a multiplicity of sects in Israel. The most numerous and important were the Perushim or Pharisees, the adherents of the orthodox or traditional interpretation of the law. To this sect belonged the great body of the people and those learned in the law. The next in importance were the Zedukim or Sadducees, who professed more liberal and philosophical tenets, and had a constituency chiefly among the aristocracy of Israel and those who enjoyed a more worldly and liberal education. The Essenes, Therapeutæ and other sects of a more ascetic nature had but a small following.

Besides the variance in their ideas of the resurrection, a future state and the existence of angels, the great difference between the Pharisees and Sadducees was based upon the acceptance or rejection of those laws, interpretations and commentaries, which were not written, but delivered by tradition from mouth to mouth, and from generation to generation.

The Sadducees acknowledged the written law only and denied the authority of oral tradition. The two tablets of the covenant or testimony intrusted to the custody of the High Priest were the only written laws known to the Hebrews in early times. Afterwards, when the Pentateuch was compiled, the laws then extant were inserted and incorporated in it. But these written laws were terse and laconic, and the meaning and bearing of many of them were not clear enough and needed interpretation and construction.

Besides, there arose new customs, and many new laws came into existence after the time of the authors of the Pentateuch. These laws and interpretations were transmitted orally from generation to generation by the Scribes and the heads of the schools of learning. From the time of Simeon the Just, who lived about 300 B. C. E., these were known as Tanaïm or teachers. Most of these Tanaïm filled the office either of Nassi (Chief) or Ab-Beth-Din (President of the Tribunal). They were accorded authority in Israel by virtue of their high office and excellence in learning. The last but not the least among these Tanaïm was Rabbi Jehudah Hanassi, who, seeking to check the spread of Sadducism, and fearing that the frequent persecutions of the teachers and schools of learning in Israel by the Romans might interrupt the tradition of the law, resolved that the time had come when the prohibition against writing down the traditional part of the law should be repealed. He made a compilation of all the laws, versions and interpretations, which became authoritative, and was accepted by all the later generations of the people of Israel, who even at that time were dispersed and scattered as far as Persia and Egypt, and who in later days were destined to live in all the corners of the globe.

## CHAPTER II.

### SCOPE AND PLAN OF THE TALMUD.

The code of Rabbi Jehudah Hanassi, called Mishna (Traditional Learning), being only a compendium, containing the principal heads and general principles of the law of Israel, became in its turn the nucleus of that larger and more comprehensive work, called Talmud (Learning). The Talmud consists of the Mishna as a text and the Gemara (Complement), and contains all the laws, ordinances, decrees and precepts, responses, dissertations and expositions, decisions, interpretations and constructions of the law, comments, explanations and glosses upon the Holy Scriptures, with an extract of the arguments, disputes and debates of the doctors of law and religion in Israel, who lived from 300 B. C. E. to 500 of the Christian Era. As the Doctors of the Mishna were called Tanaïm, so the Doctors of the Gemara are known as the Amoraïm (Debaters). There are two Gemaras in existence, one of which was compiled in Tiberias, the seat of the Jewish Patriarch in Palestine, about 380 C. E., by Rabbi Johanan of Jerusalem, and contains the learning of the schools of Palestine; the other is supposed to have been compiled by Rabbi Ashi and Rabina, in Babylon, during the fifth century, and

contains the learning of the Babylonian Schools of Surah, Nehardeah, Pumbeditha and Melusa. We have, therefore, two versions of the Talmud, respectively, called Jerushalmi (Jerusalem) and Babli (Babylonian). The final redaction of the latter was completed by Mar bar rab Ashi and Mereimar bar Rabina, the last of the school of the Amoraïm and the first among the Saburaïm or expounders.

During these eight centuries of activity in the schools, and contemporary with the Talmud, there were compiled many other treatises, which, however, did not receive the same sanction of the great Doctors and of the people as the Talmud. These treatises are known under the names of Beraitha (External), Tosefta (Addenda), Mekhilta (Roll), Sifra (Book), and Sifre (Books), and contain teachings of rabbis, which were not authenticated or not accepted. They are often cited and commented upon in the Gemara in the course of the argument.

The language in which the Talmud is written is not homogeneous, as would naturally be expected of a work compiled during centuries and in different countries. The Mishna, compiled at an earlier time, when the people had not as yet forgotten the language of their fathers, is written in a pure and forcible Hebrew; the Jerusalem Gemara is written in a Hebrew-Syriac idiom, then in use among the Jews of Palestine, and the Babylonian Gemara is an Eastern-Aramaic dialect, with an abundant sprinkling of Persian, Greek and Latin words, terms and expressions. A separate study of these composite languages is necessary to enable the student to master the science of the Talmud, just as it requires the study of Norman French to master the early English law, and there are in existence several dictionaries and grammars to help the student.

The Talmud is divided into six Sedarim (Orders). Each Seder is subdivided into treatises called Masekhtoth (Texture), each Masekhta into Perakim (Sections), and each Perek into paragraphs, which bear the appellation of the head word of the text of the Mishna.

The first Seder contains eight treatises and is called Seraim (Seeds). It treats first of the grace to be said at the partaking of any products of the soil, and incidentally of prayers in general. Then it treats of tithes, first fruits, free gifts to the priests, levites and the poor, of the fruits of the garden and field, of the prohibited intermixture of different varieties of seeds and of the lying fallow of the soil during the Sabbatical year.

The second Seder, Moed (Festivals), treats in eleven treatises of

the Sabbath, of the Passover, of the feast of Tabernacles, of the New Year's Day, the Day of Atonement, the feast of Haman, of the fast days, and of the rest to be observed on these days and the rites and ceremonies to be performed.

The third Seder, *Nashim* (Women), consists of seven treatises, and treats of marriage and divorce and their incidents, of the institution of the Levirate (or the duty devolving on a person to marry a deceased brother's widow if he died without issue), of adultery, and also of vows of married and unmarried females, and lastly of abstinents.

The fourth Seder contains eight treatises and bears the title *Nesikin* (Injuries). It treats of the civil and criminal laws and methods of procedure, of pleading and evidence, of the tribunals, modes of punishment and the incidents of trial. It also contains the *Pirke Aboth* (Sayings of the Fathers), a selection of the moral precepts and ethical teachings of the celebrated *Tana'im*.

The fifth Seder, *Kodoshim* (Sacred Things), in nine treatises, treats of the sacrifices in the temple, of the first-born animals, of forbidden food and the prescribed mode of slaughtering animals, and also contains a detailed description of the Herodian Temple.

The sixth Seder, *Taharoth* (Purifications), consists of nine treatises, and treats of disqualification for religious services and communion through certain diseases and impurities, and of the modes of cleansing required in such cases.

It will readily be conceded that the scope of the Talmud is very large. It reflects the whole civil, religious, moral and social life of the people. The area within its reach is far wider and of much greater extent than that which is covered by that great work to which it, in so many particulars, bears resemblance—the *Corpus Juris Civilis*.

### CHAPTER III.

LAW AND LEGEND: ONE THE CHIEF SUBJECT, THE OTHER AN INCIDENTAL EPISODE OF THE TALMUD.

If we open one of the many books of the Gemara and start reading a few of its pages, we will very soon discern two component parts forming the entire body of the Talmud, which, though interwoven and intermingled, bear, each of them, a thoroughly distinct character: the *Halakha* and the *Hagada*. The *Halakha* (norma, rule) is that part which treats of the religious and civil laws, the cases on which they bear, the arguments by which they are adduced and applied in practice. The *Hagada* (legend, saga) consists chiefly of a conglomeration



of legends, anecdotes, bon mots, parables, gnomes, proverbs, epigrams, arabesques, apologues, hyperbole and extravaganza. It contains symbolic tales and specious little observations, sometimes caustic, sometimes grotesque, but often superimaginative and exaggerated.

It deals in allegory, mystery, myth and tradition, not very carefully sifted and examined as to their source and worth. It does not confine itself within any limits, and is, in its character, sometimes ethical, sometimes metaphysical and mostly exegetical; but the exegesis is not very strict, and serves more to illustrate the opinions of the debater than to interpret the Bible. The Hagada is never to be taken verbatim or seriously and literally, just as a droll little story told by Lincoln could scarcely be construed as an exposition of his political tenets. It is just told incidentally in the course of the argument for diversion of minds overburdened with serious thought. It is the emanation of humor and intended for pleasantry. It is the small talk of great men.

Nevertheless, the Hagada offers to the discerning student a field from which a rich harvest can be gathered of great and small facts and incidents of the life of the ancient Hebrews, Babylonians, Persians, Syrians, Egyptians and Romans—in a word, of all those nations, scattered among which Israel lived at that time. Their mythology and philosophy, religion and morals are commented upon; their virtues and vices held up for praise or scorn. Matters of interest for the archæologist and gleanings for the philologist are scattered profusely.

In order to avoid grave errors and a total misunderstanding of the Talmud, the episodical and excursionary character of the Hagada must be always kept in mind by the student of the Gemara. Its relation to the chief subject of the Talmud is only incidental. Its place in a proper critical edition of the Talmud would be not in the text, from which it should be eliminated, but partly in footnotes and chiefly in appendices, relegated to the rear of the book, and separated from the chief topic of the Talmud, the Halakha, which alone can be properly called "the science of the Talmud," and which shall now be considered by us.

The Halakha embraces the civil and religious legislation of Israel. In the eyes of a modern codifier or legislator, the civil and political laws alone are of importance, inasmuch as religious laws have been almost eliminated from our codes since the division between Church and State has become more and more marked.

Not so with the ancient and especially the Oriental nations. The Orientals considered the life of man a religious service from

the beginning to the end, wholly devoted to God. For this reason we find so large a place accorded in the Talmud to the religious laws. They embrace every step in life, from the cradle to the grave, from the rites to be observed at the birth of a child to the ceremonies of mourning for the dead. Prayers and sacrifices, feasts and fasts, lotions and libations, ceremonies and rites for layman and priest, furnish a large field for casuistry. The Oriental Hebrew was just as much concerned in the efficacy of his sacrifice or fast as in the recovery of a debt or the establishment of his right of property. Therefore, these things were not idle talk with the Doctors of the Talmud, however unimportant they may appear in our own eyes and in our day. Some of these laws, ostensibly of a religious tendency, have a great bearing upon the affairs of civil life, such as laws relating to tithes, donations to the priests, levites and the poor, the seventh year's rest of the soil, the prohibition of amalgamating diverse kinds of seed, or crossing the breed of different species of animals, and hygienic laws for men and women. All these laws are treated with great care and accuracy, showing the deep concern which the people of that time felt in these matters.

But of more interest to the student are those matters which are incidentally referred to in the discussion of these laws. In the determining of such questions, reference is constantly made to the natural sciences and mathematics, as far as they were known to the learned rabbis of those generations. They had recourse to botany in treating of the seeds, and to zoology in speaking of unclean animals. They needed geometry to determine the distance limited for travel on the Sabbath, and astronomy to prepare the calendar of the feast and fast days, of the new year and the new month. They referred to physiology and medicine while treating of the menses and other hygienic laws; and to mechanics and architecture while describing the temple and its construction. In short, an attentive student will find in these treatises hints and proofs of the state of natural science in all its branches at that time.

But the science *par excellence* of the Talmud is the science of law. Civil law is treated exhaustively. All relations between man and man are included in the scope of its researches. The status of persons, of master and servant, husband and wife, father and child, guardian and ward, are discussed. The law of property, real and personal, corporeal and incorporeal, easements and servitudes, mortgages and hypothecations, are investigated in detail; so also the laws of inheritance, testate and intestate. The



law of bailments is most interestingly commented upon. Contracts and torts, crimes and punishments, pleading and evidence—in a word, the whole range of law is treated minutely. We can safely say, that, excepting the *Corpus Juris Civilis*, there is no code of ancient times in existence, from which the comparative jurist can learn so much as from that part of the *Halakha* which is devoted to civil and criminal law and procedure.

#### CHAPTER IV.

##### THE SCIENCE OF THE TALMUD IN ITS RELATION TO COMPARATIVE JURISPRUDENCE.

The science of law is not now, and by its nature never will be, complete. It is a science that grows and develops with the centuries of human history. Its beginnings are lost in the dim mist of the ages, in the obscure customs of hunting or pastoral tribes. It advances with the progress of civilization. Its ideal, which is justice, has never been, and scarcely will ever be, realized, but its progress consists in advanced steps towards this fair ideal.

The spirit of the laws of a nation depends—as Montesquieu has demonstrated in his “*Spirit of Laws*”—upon the intellectual, moral and social state of the nation, and primarily upon the physical condition of the country, which is inhabited by it. The climate, landscape, shape of the ground, latitude and altitude, mounds and hills, glens and dales, river and lake, forest and prairie, garden and desert, bosky verdure and barren rock—all go to make up, fashion and shape the character of a nation. Upon all this primarily rests the foundation of the manners, habits and customs, as well as of the religion and morals of a people. Their moral code in its turn will undoubtedly find expression in their code of laws. Their social relations will be mirrored in their legislative acts; and their intellectual development, their progress in mechanical arts and mercantile pursuits, will shape their laws. These will advance in subtlety and grow in bulk with the growth of industry and commerce, until the simple Ten Commandments or Twelve Tables grow through centuries of progress into volumes of Talmud or Roman code.

Thus, in a critical consideration of a code of laws, we must unceasingly bear in mind the time of its enactment and the conditions under which the people for whom it was destined were living at that time.

We have seen in a former chapter that after the return from exile and during the centuries preceding the Talmudic epoch, and at the commencement of the same, the Hebrews made considerable

civic progress. Palestine, being now a part of a great empire, although suffering at times from the oppression of despotic kings of Persia or Syria, was, nevertheless, much better off than during the time of its independence, when it was surrounded by petty kingdoms and constantly in war with them. The intercourse between the component parts of a great empire is incomparably more extensive than that which warring neighboring countries can have with each other.

Although chiefly an agricultural people, the Jews at that time commenced to engage in mechanical arts, industrial pursuits and practical trades. They also carried on an extensive commerce by land and sea with neighboring nations. This, of course, gave an impetus to the development of their law, in scope as well as in acuteness, which was unprecedented in their history.

Compared with the simple laws of the Mosaic code, which were in force in earlier times, the law of the Talmud, therefore, shows great progress. More than that: it indicates a revolution, or that great change in its character, which the acute comparative jurist, Sir Henry Maine, in his "Ancient Law," proved to be the natural course of all systems of law in their transition from the ancient customs of primitive society to the advanced laws of industrial society, namely, the decadence of the law of status and the growth of the law of contracts. The law of the family relations and of master and servant came to a standstill in its development, and a new branch of the law, almost unknown to the Mosaic code, stepped to the foreground. This was the commercial law, the law of partnership and of bailments, of credit, notes, loans and interest, the law of sales, renting and hiring and the like transactions, arising not from the fiscal condition or status of the citizen, but having their source in the free mutual consent and spirit of enterprise of men standing in equal relations to each other and dealing on an equal basis. The law of status did not die out altogether at that time, but the birth of industrial society is announced in the importance given to the law of contracts by the Rabbis of the Talmud.

It is not our purpose to give an exhaustive statement of the civil and criminal law of the Talmud; this would require volumes and could not be done within the limited space allotted to an essay like the present. We will, therefore, merely cite a few characteristic examples to show how the Talmudic legislation improved upon the Mosaic law to suit the new circumstances of life and to satisfy the demands of a new generation—a course pursued by all systems of law in their development.

It is well known that the Mosaic law prohibited, not only usury, but all interest on loans between the people of Israel, and went even so far as to enjoin the creditor, who took a chattel in pledge for his loan, to surrender the pledge before the sunset of the same day. This law, ethical as it is in its character and generous in spirit, was practicable and acceptable only in a society composed of simple peasants, who tilled their own soil, raised their own cattle and spun their own cloth; a society in which any commercial dealings were of a very primitive kind, as, for instance, when a few surplus products of the soil were exchanged for some products of a neighbor. In such a society the idea of commercial credit was not so much as guessed at. But a law of this kind must become obsolete in a more advanced phase of social life, when tribal bonds were loosened and when money has become a universal measure of value and a means of exchange. But as the law of Moses, written in the Pentateuch, was considered sacred and inviolate, and could not be repealed, the learned Rabbis of the Talmud proceeded in the same way as the English judges chose to proceed a thousand years later. Not having the constitutional right to legislate or to alter the laws, but only to expound them, the judges, when a new case was presented to them, growing out of new social conditions, either extended the principle laid down in the old cases so far as to cover by construction the questions involved in the new case, or, as was often done in the earlier English law, invented some legal fiction, which was not to be disputed, and in this way brought the new case formally within the old law. The Rabbis resorted to a fiction of this kind when they invented the *Star Iska* (Bill of Dealing), which presumes the creditor to have become the owner of a share of the profits of the commercial enterprise of the debtor, equal to the amount of the interest charged. Through this fiction the law of Moses was not violated in its letter, and the legal change required by the new condition of things, and dictated by commercial intercourse, was effected.

Another example of the important role of fiction in the development of law is the *Erub* (Combination). On Sabbath and feast days the Hebrews were enjoined from travelling further than two thousand cubits from their domicile. In order to avoid this injunction in urgent cases the law again made use of a fiction. By preparing or taking a meal at any place within the two thousand cubits one could establish a domicile at that place and acquire a right to travel two thousand cubits further, counting from the new domicile.

Another feature, which we meet with almost universally in the ancient systems of law, is symbolism. This feature explains a great many of the laws of to day, as derived from some earlier symbolic customs. Kinian Sudar, or delivery of a piece of cloth, was necessary by the laws of the Talmud to make a sale valid. This law originated in the former custom of taking off a shoe and putting it over the property acquired to indicate ownership.

The transition from the former tribal or communal ownership of property and the jubilee year institution (when all property had to be returned to the family that originally owned it) to the system of individual and absolute property, necessitated strict and elaborate definitions of the right of property and the establishment of a law of limitation, that is, of a time, after which the right of property could no more be disputed in the owner. Hasaka is a title to property acquired by uninterrupted possession, or what is called in English law, prescription, *i. e.*, a presumptive right of property in the one who has had uninterrupted actual possession. Prosbol, or a protest against the loss of right to recover debts and claims by limitation after the seventh year, was an innovation introduced by Hillel the Elder. It was similar to the Roman Declaration introduced by Emperor Justinian, and was intended as a rebuttal of the legal presumption that a man abandoned his claim after the lapse of seven years.

But the improvements of the Talmud upon the Mosaic code are nowhere so patent as in that most important branch of civil law, the law of bailment. The chapter of the Corpus Juris Civilis treating of the law of bailment is considered one of the most glorious chapters of the Roman code ; yet, centuries before the time of Justinian, the Talmud presented most elaborate treatises on this branch of the law. All the different cases of bailment are defined and distinguished in the Talmud : Depositum or deposit, Mandatum or commission, Commodatum or loan, Pignus or pledge, and Locatio Conductio or hiring for use or work. This part is treated, as usual in the Talmud, with great ingenuity and is highly interesting.

The penal code of the Talmud is unique. It surpasses the latest constitutions of our civilized States in the liberality shown to the accused, and in precautions against condemning the innocent. In the administration of criminal law, and in the humane regard for the accused, the Talmud compares favorably with many of our modern systems of law. The *lex talionis* of the Mosaic code had totally disappeared at the time of the Talmud. While in civil cases the court consisted of any three learned men selected

by the litigating parties, criminal law was administered by a Synedrion or tribunal of not less than twenty-three judges selected among the most learned in the law. In capital cases they had to deliberate for not less than two days, and sentence could not be pronounced before sunset of the second day, while acquittal of the accused could be pronounced on the first day and at once. A simple majority was sufficient for acquittal, but a majority of two was required to condemn the accused. If only a majority of one (that is twelve judges), was for conviction, then judges were added to the court, two at a time, until a majority necessary either for acquittal or conviction agreed. A judge who had spoken in favor of the accused was not allowed to speak against him, but one who had at first been against him could change his opinion in favor of the accused. Arguments in favor of the accused were heard first. The junior judges had to pronounce first, in order that they might not be influenced or overawed by the authority of the senior judges. No person could be put in jeopardy of life more than once. No person was required to incriminate himself by testifying, but one could testify in his own defence. The presumption of the court was that the accused was innocent. No evidence was allowed of the antecedents or of the general character of the accused, and no evidence of previous conviction, but every case of accusation had to be tried upon its own merits. Relatives, known enemies, creditors and debtors of the accused were not competent as witnesses. Gamblers, usurers, slave dealers, and other persons of immoral habits, were not admitted to testify.

Hearsay evidence and circumstantial evidence were totally excluded by an admonition given to the witness, before the testimony was taken. No capital sentence could be pronounced on the strength of circumstantial evidence only. The taking of the evidence was conducted by the judges very scrupulously, and all precautions were taken to elicit the truth.

The cross examination was very rigorous, and consisted of two parts: Hakira and Bedika. Hakira was an investigation as to the time and place of the commission of the crime and tended to establish an alibi. The questions of the Hakira were seven:

(1) In which Shemita, or seventh year cycle, the event happened.

(2) In what year of the Shemita?

(3) In what month of the year?

(4) On what day of the month?

- (5) On what day of the week ?
- (6) At what hour of the day ?
- (7) At what place ?

The Bedika was unlimited as to the number of questions, and extended to all the material facts and corroborating circumstances.

The testimony of at least two witnesses was required, and they had to agree in all the material points ; otherwise, conviction could not be had.

But the most remarkable and we may say unique, but highly commendable piece of legislation, was that which provided that no conviction could be had before it was absolutely and directly established that the accused was not ignorant of the law, or that he was warned that the act he was going to commit was criminal. While in our systems of law it is a maxim that the ignorance of the law is no excuse, the Talmud did not presume that which is not true even now in the most civilized countries, that is, that everybody is acquainted with the laws of the land.

The accused being guarded by such an abundance of guarantees, the conviction of an innocent person could rarely occur. But the Rabbis deemed it necessary to take further precautions, and after sentence was pronounced and the culprit led to the place of execution, pickets were placed on horseback along the route from the tribunal to the place of execution, so that they might stop the execution in case any new evidence was discovered in favor of the culprit or any new circumstances arose to change the sentence of death. The day of an execution was a day of mourning for the community for the loss of one of its brethren. The humane spirit that pervaded the tribunals of Israel at the time of the Talmud is well illustrated by the fact that a Syne-drion, which pronounced a sentence of death more than once within seventy years, acquired the sobriquet : Katlanith, that is, the man-killing tribunal.

Such is the law of the Talmud. It needs no apology. Behold it, study it, and, after perusing it with an unprejudiced mind and unbiased judgment, you will find that it rightfully occupies one of the most distinguished places among the monuments of the past. It is the only code of laws of such elaborate character discerning minuteness and extended scope, inherited from such a remote age, older by centuries than the Roman code. It offers rich opportunities for the student of comparative jurisprudence, which cannot be valued too highly, but which have been but little regarded up to the present time.

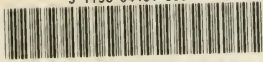








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